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THE KUMBAKONAM LAWYERS CONFERENCE.

Few would be disposed to doubt the effective part which lawyers acting vigilantly, in union and in a spirit of realism, can play in regard to the maintenance of the rule of law and the protection of constitutional rights and civil liberties to the extent to which they have been made available to the people of this country against possible encroachment by the executive authorities. Constant vigilance on their part was never needed more than at present when normal conditions of life have been thrown out of gear and the exigencies of war have been responsible for numerous ordinances and special laws being put in force. It is in this background that the conclusions arrived at by the conference of lawyers that met at Kumbakonam recently become noteworthy. According to all accounts the conference was a representative gathering and a great success. The various problems in which the legal profession is interested such as the problem of over-crowding, the regulation of fees "with due regard to the interests of a skilled profession and of the litigant public," the need for organised help to members of the profession who have become incapacitated, etc., were all fully adverted to in the inspiring address of Sir Alladi Krishnaswami Aiyar who presided over the conference and suitable resolutions touching them have also been passed.

It may be useful to recall that in the west, the "atomic view" of individual rights (such as, the personal inalienable rights which had been set forth in terms in the American constitution) had formed the foundation of the nineteenth century jurisprudence. That liberty was good and that personality was to be respected had been accepted by every one. Since then, however, the sociological ideal has considerably changed and the law has been strained and made to accommodate itself *pari passu* thereto. A steady decrease in the respect paid to human personality with a corresponding exaltation of the State—the tendency taking different forms in different countries—is being manifested. For instance during the war of 1914—18 only uttered opinions likely to assist the enemy were forbidden; whereas, during the present war to speak in such a manner as to spread alarm or despondency is punishable. Again matters raising essentially judicial problems are being on an increasing scale withdrawn form the Courts of law. The administrative tribunals show no signs of diminution and recurrent conditions of modern warfare have tended to increase them considerably. In the words of the Right Hon'ble Sir Henry Slesser: "An immense body of legislation has encroached upon the old respect for individual liberty and individual property; social ethics have superseded individual rights. If as has been said, law formerly paralysed, administration, to-day public administration is likely to strangle law"[1]. Sir Henry

1. The Judicial Office and other matters, p. 145.

Slesser pertinently asks: "Are we back in the situation envisaged by Hobbes and defined by Austin where all law consists in the commands of the Sovereign?" If in the western democracies these tendencies and processes are manifesting thmselves in an increasing measure, the diminution in regard to individual liberties and constitutional rights in a country like India is likely to be more and hence the need for constant vigilance to see that the executive does not encroach upon such limited liberties as are available to the individual under the law and the constitution is greater here than elsewhere.

The maintenance of rights and liberties calls for the preservation unimpaired of the powers of our highest Courts. The ordinances have shown a tendency to trench upon such powers and the normal forms of procedure. Thus under ordinance 3 of 1944 a person against whom action is taken thereunder cannot have his position examined through *habeas corpus*. In this context it may not be inappropriate to refer to the recent ruling of the Privy Council in the *Ryots of Garabandho* v. *Zemindar of Parlakimedi*[1], holding that the High Courts have no power to issue *certiorari* to run into the mofussil, upsetting the views which were till then held. It should be the endeavour of all lawyers to see that the jurisdiction of the High Court to correct arbitrary action or abuse of power by tribunals exercising quasi-judicial functions or by executive authority is made secure and full power to issue writs corresponding to the prerogative writs in England is vested in them by statute.

As regards overcrowding at the bar, it is the wastage of trained talent that results therefrom that has to be immediately averted. The devising of benevolent or provident fund schemes can afford only a very restricted measure of relief. Separation of the judiciary from the executive has always been conceded to be a salutary principle. If the principle is given effect to and persons with legal qualifications and experience at the bar are appointed as magistrates the tone and standard of administration will improve and a certain number of lawyers will be absorbed. Likewise it would be but proper if recruitment to other offices where a legal training would be of advantage is made from the ranks of the bar. Thus lawyers can be recruited as income-tax officers, assistant commissioners and inspectors of religious endowments, panchayat officers, commissioners of municipalities, etc.

With reference to recruitment to the judiciary, apropos of the conditions in England, Sir Henry Slesser has made the suggestion that it should be done in regard to every class of Judges by the Lord Chancellor, a person in touch with the bar, assisted if need be by a committee consisting of the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division and a County Court Judge. On that line of reasoning the powers of recruitment to the subordinate judiciary, where it is to be made from the bar, should be entrusted to the High Court. In regard to the personnel of the High Court Bench, an interesting suggestion has been made by Dr. Katju recently in the columns of the Allahabad Law Journal that the selection should be made by a committee composed of the Chief Justices of the High Courts presided over by the Chief Justice of India, the selection to be made in case of difficulty in finding a suitable person from the bar of any particular province to the Bench of that province, from among the members of the bar of the other provinces.

A point of great concern to the members of the bar is the question of their liability for disciplinary action as well in case of conviction for political offences. Such liability does not exist in the case of persons pursuing other professions. To

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1. (1943) 2 M.L.J. 254 (P.C.).

postulate and enforce the additional liability in the case of lawyers will be practically to shut them from taking part in politics and thereby deny to them one of the elementary rights of every citizen. It may in passing be also noted that on the question of the existence of the liability itself there is some difference of judicial opinion. It is to be hoped that the committee appointed by the Lawyers Conference to consider this matter will be able to evolve a satisfactory solution.

LAW OF INSURANCE*

BY

C. UNIKANDA MENON, ADVOCATE, MADRAS.

III

Questions of renewal and re-insurance of policies, of over-insurance and novation, of amalgamation and of assignment and transfer occupy a prominent place in the law of insurance.

Renewal.—The duration of the policy is fixed by agreement. It can be previously determined by breach of condition subsequent, by mutual agreement, or by a winding up. As loss after the expiry of the duration of the policy is not covered, policy has to be renewed before the expiry of the period fixed. Except in life policies, renewal is possible only by mutual consent. In the case of renewal by mutual consent, each renewal is to be deemed a fresh policy and the duty of good faith and full disclosure attaches. Life policy is a continuing insurance till death and the assured is given an absolute right to renew on payment of renewal premium. As it is a continuing insurance, renewal in life-policy is not a fresh contract and the assured is not under a duty to inform the insurers of the assured's change of health. For the same reason, if the assured committed a breach of good faith by concealment or misrepresentation in the beginning, the right of the insurers to avoid the policy, continues even after the renewal. For renewals, in the case of life policy thirty days of grace and in the case of fire policy fifteen days of grace are allowed, and for renewal of motor vehicle insurance policies no days of grace are allowed.

Re-insurance.—An insurer, when he feels that he has entered into a risky insurance, lessens his liability by insuring his insured risk. This is known as re-insurance. An insurer has insurable interest to re-insure to the full extent of his liability. The insurer need not insure the whole risk or the whole amount of the risk. He can re-insure a portion of his liability. The disabilities attaching to insurance attach to re-insurance. Where insurance is *ultra vires* re-insurance also is *ultra vires*. Where the insurers grant two policies on the same property, the total amount of them being greater than the value of the property insured and subsequently they re-insure on one of such policies only, the amount of liability of the re-insurer will depend on whether the insurance policies are concurrent or successive. If the insurances are concurrent, the re-insurer has to pay such portion of the whole loss as is equal to the proportion which the re-insurer's policy bears to the whole sum insured. If the insurances are successive and the original insurers were liable only on the second policy, and the second policy was re-insured, the re-insurer will have to pay up to the full amount on the policy of insurance. The re-insured should show good

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* Lectures III and IV of the lectures delivered under the auspices of the Madras Bar Council. A summary of Lectures I and II was published in (1944) 1 M.L.J. p. 23 (Journal).

faith as if he were seeking insurance and not re-insurance. The re-insured must communicate information possessed by him and material to the risk at the time of re-insurance, though it was not communicated to him, by his insured at the time of the original policy. Concealment and misrepresentation avoid the policy of re-insurance. The essentials to be complied with by an insurance company as a condition to its legal formation have to be complied with by a re-insurance company also. It was held in a recent case, *Forsikringsaktieselskabet National (of Copenhagen) v. Attorney-General*[1] that the business of re-insuring fire risks, is fire insurance business within the meaning of the Assurance Companies Act of 1901. Accordingly it was held there a foreign company which carries on business of re-insurance of fire risks in the United Kingdom must deposit with the Paymaster-General, £ 20,000, as prescribed by section 2, sub-section 1 of the Act.

The terms of the head policy of insurance cannot be varied without the knowledge and consent of the re-insurers. Where certain insurers of a ship who had re-insured a part of the risk entered into an agreement with the owners of the ship for the reduction of the insured amount and for return of part of the premium without the knowledge of the insurers and the ship became a total loss, it was held that the re-insurers were relieved from liability.[2]

Over-insurance.—The assured to safeguard his interest sometimes over-insures. The assured does not acquire any greater right by over-insurance. Over-insurance is effected in two ways : (1) by double insurance in two or more policies, (2) by excessive insurance in one policy. To constitute double insurence, (*a*) all policies must be effected by the same assured for the protection of the same interest, in the same subject-matter; (*b*) all policies must cover same risks; (*c*) all policies must be valid and subsisting. If the amount secured by the various policies exceed a full indemnity two alternative courses are open : (*a*) he may select a policy upon which to take his full indemnity; (*b*) he may distribute the loss rateably amongst the insurers upon all policies in proportion to the amount insured thereby.

In unvalued policies, no question of over-valuation arises. In valued policies, if the value stated is an over-valuation to the knowledge of the assured but concealed from the insurers and if the assured is guilty of fraud or if the valuation is so excessive as to make the policy a contract by way of gaming or wagering, the policy is avoided.

Novation and amalgamation.—Another method by which an insurer releases his liability under insurance is by amalgamation or novation. Amalgamation means arrangements between insurance companies by which one company takes over the business of another company. It makes the shareholders of one company shareholders in the other.[3] Sections 35 to 37 of the Indian Insurance Act (IV of 1938) deal with these subjects. Life insurance business of one insurer shall be transferred to or amalgamated with the life insurance business of another only in accordance with a scheme sanctioned by the Court having jurisdiction over one or more of the insurers. Two months before making an application to Court, notice of the intention to make it, with a statement of the nature of the transfer or amalgamation, shall be given to the Central Government and during these two months certified copies of draft of the agreement or scheme, statements of the assets and liabilities of the company and also the actual report or other reports on which the scheme or agreement is founded, shall be furnished to the Central Government and they shall be kept open for inspection at the head or branch offices. When application for sanction is made to Court, the Court shall send notice of it to all policy-holders in British India and shall cause a statement of the terms of transfer or amalgamation published; and after hearing the directors and policy-holders who apply to be

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1. (1925) A.C. 639.
2. *Norwich Union Fire Insurance Society* v. *Colonial Mutual (Fire) Insurance Co.*, (1922) 1 K. B. 461.
3. In re *South African Supply and Cold Storage Wild* v. *Same Co.*, (1904) 2 Ch. 268.

heard it may sanction the same. When amalgamation or transfer takes place between any two insurers, the insurer carrying on the amalgamated or transferred business shall furnish to the Central Government a certified copy of the scheme with a declaration that no payments other than those mentioned in the scheme have been made or are to be made.

An insurance company which transfers its *ultra vires* business or which cannot by its constitution compel the contract-holders to look to the new company is not entitled to be dissolved and may be resuscitated. Rights of policy-holders and creditors of the transferor-company against the transferring-company are not affected, unless dissolution, transfer or amalgamation involves a discharge to creditors of the dissolving company or unless they accept the indemnity of the new company. To avoid risk of novation by acquiescence a formal written protest and payment of premium subject to it is necessary. Payment of premium in ignorance of the change is not assent to it.

Assignment of policy.—The assured also may assign or transfer his policy, totally or partially; in the former case, the assignor cannot recover, because he has lost his interest; in the latter case, he can recover to the extent of his remaining interest. Assignment may be of the subject-matter or of the policy or of both. It may be voluntary or by operation of law. The assignment of the subject-matter may be by sale and purchase. To divest the assured of his interest, absolute sale is necessary. A mere contract to sell or an incomplete sale is insufficient. Where the assured is a firm, a change in a firm by a retiring partner assigning his interest to the other partners or by admission of a new partner deprives the firm of its interest. In such cases, there is necessity for the consent of the insurers. Similarly an assignment of the policy may be effected in two ways, by assignment of the policy itself (contract) or by the assignment of the proceeds of the policy. To constitute a valid assignment of a policy, consent of the insurers has to be obtained in fire insurance but in life insurance, no such consent is necessary. Assignment of policy should be simultaneous with the assignment of the insured's interest in the subject-matter. There may be an assignment of the proceeds in which case the assignee need not have any interest in the subject-matter. If loss had already happened, the proceeds of insurance could be assigned as a chose in action. If loss had not happened and if during the policy an assignment of the right to be subsequently acquired is made, the assignee should fulfil all conditions precedent.

By section 5 of the English Policies of Assurance Act, 1867, an assignment may be made by endorsement on the policy or by a separate instrument. Such an assignment may be created even by word of mouth and an equitable mortgage may be effected by the deposit of a policy of insurance.

Section 38 of the Indian Insurance Act IV of 1938 deals with the assignment of insurance policies. Under it a transfer or assignment of a policy of life insurance whether with or without consideration shall be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, especially setting forth the fact of transfer or assignment. The transfer or assignment shall be complete then, but except where it is in favour of the insurer, it shall not be operative as against the insurer and shall not confer upon the transferee or assignee any right to sue until a notice in writing of the transfer together with the said endorsement or instrument or its copy certified to be correct by both the transferor and the transferee has been delivered to the insurer. The date of notice delivered to the insurer settles the priority of all claims under a transfer or assignment of all claims as between persons interested in the policy. Upon the receipt of such notice, the insurer shall record the fact of transfer or assignment with its date and the name of the transferee or assignee and shall on the request of the person giving notice grant a written acknowledgment of the receipt of such notice. Such acknowledgment shall be conclusive evidence against the insurer of the receipt of

such notice. From the date of such notice, the insurer shall recognise such transferee or assignee only as the person entitled to benefit under the policy, subject to all equities to which the assignor or transferor was subject. The assignee or transferee is liable for all defences which the insurers are entitled to raise against the assignor such as fraud, etc.; or if the assignor of a policy which was taken in his favour by a third party is guilty of felony against such other third party, the assignee cannot sue for the benefit under the policy on grounds of public policy. In *Cleaver* v. *Mutual Reserve Fund Life Association*[1], it was held that, when a husband took a policy in favour of his wife and the wife assigned it in favour of another and murdered her husband, no suit could be brought. Assignment by operation of law takes place upon death or bankruptcy of the assured.

Claim.—As soon as loss occurs to the insured goods, a claim has to be made by the insured stating such particulars of loss as are available to him. To save the insurers from unfounded claims, the assured should give notice of full, available, best particulars of the loss within a reasonable time. The notice need not be in writing. It may be given to the agent of the insurer.

The insured should guard against making fraudulent claims. By making fraudulent claims, he forfeits all benefits under the policy. Claims put forward knowing that no loss is suffered or in a deliberately exaggerated manner to fix a basis for negotiating a settlement are fraudulent.

Arbitration clauses.—Sometimes there are arbitration clauses to refer disputes arising under the policy to arbitration especially in the case of marine policies. Originally, an unqualified agreement to refer to arbitration was held to be invalid as it precluded parties from enforcing their claims by a regular suit. But the decision of the House of Lords in *Scott* v. *Avory*,[2] which was approved in *Jureidini's case*[3], altered the above rule and held that when the parties have entered into a contract of indemnity they may, if they chose, agree that in the event of any loss occurring, such loss should be ascertained by an arbitrator whom they may select and they may agree to pay such loss when it has been ascertained but not otherwise. An arbitration clause in a policy does not preclude the assured from bringing an action to enforce a claim, but if the assured sues, the insurers are entitled to apply for a stay of the action. Usually an arbitration clause provides that the award of arbitrators is a condition precedent to sue, *vide* section 4 of the Indian Arbitration Act (IX of 1899). In such cases, only an action on the arbitrators' award lies.

Principle of indemnity.—After a claim is made by the assured, the insurer has to indemnify the assured except in cases of life insurance or accident insurance. Only what has been lost need be made good. If the subject of loss is not totally destroyed, the assured can claim only damages on his restoration of the damaged property to the insurer. If he does not treat the subject of loss as wholly lost to him, he cannot demand that the whole loss should be made good to him. This doctrine of abandonment though chiefly applied to marine insurance, is applicable to every kind of insurance on property; and the assured shall release to the insurer all ways and means of repairing the loss.

The indemnity may be (1) by payment, or (2) by re-instatement in the case of destruction of building by fire. If the insurer elects to pay, he cannot re-instate. As all policies on property (policies on life and on accident being exceptions) are contracts of indemnity, the interest of the assured must be actually ascertained. Even in valued policies the interest of the assured must be actually proved. This leads to the conclusion that only the loss may be made good. If the property is not totally destroyed the assured can claim the value of the injury unless what remains in surrendered to the insurer. It has to be remembered that the test in the doctrine of abandonment consists in the property losing its identity. The assured must repair the loss and not release any right of action to the prejudice of his insurers.

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1. (1892) 1 Q.B. 147.
2. (1855) 5 H.L.C. 811.
3. (1915) A.C. 499.

While considering the extent of such indemnity, it is to be noted that where things insured are constant, such as buildings, etc., the indemnity should be up to the amount named in the policy; that when the policy made subject to conditions of average and the goods at risk exceeds in value the amount insured on goods in the place named, the risk only attaches to the goods to the extent of such value, and that only direct damages are indemnified and not indirect damages such as loss of business. The amount of indemnity has to be determined not by the cost but by the market value at the date of the loss. Indemnity is limited by other qualifications such as the marine rule " one-third new for old."

Payment.—Payment of the claim must be in cash to the assured or his personal representatives or assignees or trustees in bankruptcy or if a garnishee order is made against insurer, to the judgment-debtor. In the case of conflicting claims, in life policies insurers are entitled to discharge on payment into Court. Section 47 of the Indian Insurance Act (IV of 1938) enacts that where a life policy has ripened for payment and it is not possible for the insurer to obtain a satisfactory discharge either because of conflict of claims or of insufficient proof of title to the amount secured thereby or any other sufficient cause, the insurer can apply to deposit the amount in Court before nine months from the date of the maturing of the policy, and in case of death of the insured, before the expiry of six months from his death.

In the case of policies other than of life insurance, the insurers have no direct right to pay into Court, the remedy consisting in interpleading and getting an order to pay the amount in Court and getting a discharge. When the insurers cannot be compelled to pay a claim, they make *ex-gratia* payments. Insured amount paid under a mistake of fact as to loss or damage contemplated under the policy is returnable where there is really no such loss or damage. *Vide Norwich Union Fire Insurance Society, Ltd.* v. *W. M. H. Policy, Ltd.*[1]

Re-instatement.—Payment is not the only mode of satisfying the claim. In the case of fire insurance an alternative method of meeting the claim is by re-instatement, the restoration of the subject-matter of insurance to its former condition before loss. Anyone interested in the property such as a mortgagee, etc., may apply to the insurer to re-instate. Notice to re-instate should be given before money is paid. If the insurer refuses to re-instate, he might be made to do so by mandamus. Where a landlord sues on the policy for compensation, but the tenant sues for re-instatement, the insurer's remedy is to file an inter-pleader suit. Re-instatement should be within a reasonable time. He must make the new building as good as the old, otherwise the insurer is liable to an action for compensation by the assured. If the thing insured cannot be put back in the same locality and if nothing is said about the locality, re-instatement should be made within a reasonable distance of the locality. If the insurers elect to re-instate and a fire occurs during the re-instatement the insurers are their own insurers and must re-instate *de novo.* If re-instating is lawful at the time of election but later becomes impossible, the insurers are liable in damages.

Subrogation.—As soon as the claim is thus satisfied either by payment or re-instatement, the insurer becomes entitled to be subrogated to the rights of the assured. Subrogation is treating the insurer as standing in the place of the assured as regards the latter's right of action against some other person primarily liable to the insurer. Unless the assured is fully indemnified, the insurer gets no right to it. After full indemnity, the insurer is entitled to the advantages incidental or attached to the ownership of the thing[2]. The insurer can recover from the assured benefits received by him from other sources in excess of his actual loss. If the injury to the property is due to the acts of the assured, subrogation does not apply. By subrogation, the insurer's claim in case of unvalued policies is limited to the extent of the indemnity paid, in case of valued policies to such proportion only of those damages as the amount insured bears to the valuation of the policies. The insurers can

1. (1934) A.C. 455.

2. *Castellain* v. *Preston*, (1883) 11 Q.B.D. 380 at 388.

claim all the salvaged property. The insurers are subject to all defences available against the assured. The assured must not prejudice the insurer by not suing on the whole damage or by releasing the action or by compromising it.

Contribution.—When there are different insurers of the same interest in respect of the same property against the same peril and the total amount insured against exceeds the total value of the subject-matter and when the insurer pays or has to pay the full amount to the insured he is entitled to claim contribution from the remaining insurers.[1] If therefore he has effected two or more insurances in respect of his interest and their total amount exceeds the amount of his loss, it is necessary to apportion the amount recoverable among the different sets of insurers, in order to prevent the amount being borne in an undue proportion by any one of them. Thus, contribution, as distinguished from subrogation, implies more than one contract of insurance, each undertaking similar liability over some subject-matter and interest. The amount of insurance must exceed the value of the property or damage. The assured must have concurrent remedies against the insurer and the person causing the loss. The rule of contribution applies to all classes of insurance which are contracts of indemnity. The right of contribution does not depend upon the contract but on principles of equity.

Sometimes conditions are inserted in the policy to compel the assured to distribute the loss amongst different policies and to prevent him from obtaining payment in full under one policy. The policy usually contains a condition commonly called the contribution clause, to the effect that if at the time of any destruction or damage happening to the property insured by it there is any other insurance effected by or on behalf of the assured covering any of the property destroyed, the liability of the insurers is to be limited to their rateable proportion for which they are liable after all policies subsisting at the time of the loss have been taken into consideration. The apportionment of the loss is governed by various rules of practice[2].

IV

Foreign Companies.—Insurance companies incorporated under the law of one country might carry on business in another country having different laws. In such cases, the domicil of the company is its principal place of business.[3] A foreign company which carries on business through an agent but has no office does not establish a place of business in the country where the agent does the business, *Princess Clementine*, (1899) P. 18. Foreign insurance companies incorporated outside the United Kingdom or India and doing business in the United Kingdom or in this country have to comply with certain requirements regarding deposits, etc.[4] In *Forsikringsaktieselskabet National of Copenhagen* v. *Attorney-General*[5], it has been held that a foreign company carrying on the business of re-insurance of fire-risks in the United Kingdom is bound to deposit with the Paymaster-General the sum prescribed by section 2, sub-section 1 of the Assurance Companies Act. Lord Dunedin observed in that case at page 643 : " The policy of the statute is no more and no less than this : You that dabble in insurance business shall deposit a certain sum to give partial security that you shall pay your debt." Supposing those foreign insurances, companies do not comply with such requirements, does the policy become invalid ? It has been held in the United States of America that the company will incur the prescribed penalties but its policies will be binding and may be enforced by the holder in the same manner as if the company had been qualified.[6] The same seems to be the law in India under similar circumstances.[7]

1. *North British and Mercantile Insurance Co.* v. *London, Liverpool and Globe Insurance Co.*, (1877) 5 Ch. D. 569.

2. *See* Baker Welford and Otter Barry, Fire Insurance, Ch. XXIV. 3rd Edn., 1932.

3. *Michell* v. *Egyptian Hotels, Ltd.*, (1915) A.C. 1022 ; *Carron Iron Co.* v. *Maclaren*, (1855) 5 H.L.C. 416.

4. *Vide* sections 343 to 352 and Sch. X, part III of the English Companies Act of 1928. *Vide* section 62 of the Indian Insurance Act (IV of 1938).

5. (1925) A.C. 639.

6. *Berry* v. *Knight Templars and Masons Life* (1891) 46 Fed. Rep. 429.

7. *Vide* sections 102 and 103 of the Indian Insurance Act, (IV of 1938).

Law governing.—What is the law that governs a foreign company? This is decided by the provisions in the contract. If there is no provision in the contract, it is a matter of construction of the contract itself, read in the light of surrounding circumstances. The general rule is that the law of the country *lex loci*, where the contract is made, governs the nature, the obligations, and the interpretation of it unless the contrary appears to be the express intention of the parties.[1] If the assured wants a contract with a foreign company to be governed by the law of his own country, he should have a provision inserted to that effect in the policy in order to oust the *lex loci contractus.*[2] There are certain cases in which the law of England must be applied even though the law generally applicable may be that of a foreign country. Those cases are: (*i*) where the policy is one which by reason of some defect in form is not enforceable by English law, vide *Lerouse* v. *Brown*[3], for example, verbal contracts which are enforceable within the year; (*ii*) where the policy is one, the making of which is prohibited by English law or is inconsistent with English ideas of public policy.[4]

Place of Contract.—When a foreign company carrying on business within the realm grants a policy, the contract will be held to be made at the head office abroad of such company, if the consent to issue it must be and is there given; and it may be sued on there. If the insurer's agents in the country of the assured have power to effect a complete contract there without reference to the head-office, the contract will not be foreign, and will be valid where made, even though forbidden by a monopoly within the domestic forum of the insurers.[5]

Place of payment.—Where the policy is foreign, in the absence of a provision in it as to the place of payment the demand must be made at the head office before the company can be considered to be in default. But in the case of insolvency, the creditor on a policy would be entitled to rank in his own forum against any funds deposited there within its jurisdiction.[6]

Where the company and the contract are both foreign, judgment may be obtained in the *locus contractus* and then proceeded on in the English Court under R. S. C., 1883, Ord. III, R. 6 and Ord. XIV.[7] A winding up order may be obtained against a registered company, even though the person, property, management and directorship be abroad, provided that it is a company which at the outset contemplates some description of business in England even though in substance, all its operations may be abroad.[8]

Effect of war on contract.—An alien enemy including a corporation[9] is incapable of contracting with a British subject and cannot during the continuance of hostilities between the countries with which he is to be identified and Great Britain enter into a valid contract of insurance with British Insurers.[10] If the policy is effected and the contract entered into before the outbreak of war, the policy is only suspended during the continuance of the war, but can be enforced after the conclusion of peace.[11] It is the war and the war alone that makes trading with enemy illegal and a mere probability of war has not the same operation as war itself. In *Janson* v. *Driefontein Consolidated Mines*[9], the plaintiff who had effected with the respondents, a company registered under the law of the South African Republic, a policy at Lloyds on a large quantity of gold which was being consigned from South Africa to London, sued on this policy dated August 1, 1899, in respect of a seizure by the Transvaal Government of the gold in question of October 2 of the same year. The defence to the action in question rested upon the proposition that the policy was an unlawful contract. The making of the policy and the loss occurred before the breaking out

1. *Jacobs* v. *Credit Lyonnais*, (1884) 12 Q.B.D. 589 at 600.
2. *Robinson* v. *Bland*, (1760) 2 Burr. 1077 : 97 E.R. 717.
3. (1852) 12 C.B. 801 : 138 E.R. 1119.
4. *Vide* Baker Welford Fire Insurance, 3rd Edn., 1932, page 410.
5. *Pattison* v. *Mills*, (1828) 1 Dow. and Cl. (H.L.) 342 at p. 382.
6. *Thurburn* v. *Steward*, (1871) L.R. 3 P.C. 478.
7. *Grant* v. *Easton*, (1883) 13 Q.B.D. 302.
8. *Bulkeyby* v. *Schutz*, (1871) L.R. 3 P.C. 764; *Bateman* v. *Service*, (1881) 6 A.C. 386; *Princess of Reuss* v. *Bos.*, (1867) L.R. 5 H.L. 176.
9. *Janson* v. *Driefontein Consolidated Mines*, (1902) A.C. 484, per Lord Lindley, at p. 505.
10. *Ibid.*, per Lord Davey, at page 499.
11. *Ibid.*, per Lord Halsbury, at page 493.

of the war which was on October 11, 1899, the crucial point between the parties being whether the war had been commenced or a mere imminence of war existed when the seizure was made on October 2, 1899. The Judicial Committee held that the plaintiff could recover. Lord Halsbury observed at page 496 : " I do not think we are at liberty to consider whether the contract must be against public policy because one of the parties to it might become an alien enemy afterwards." Lord Davey said at page 498 as follows : " There are three rules which are established in our common law. The first is that the king's subject cannot trade with an alien enemy, that is, a person owing allegiance to Government at war with the king, without the king's licenee. Every contract made in violation of the principle is void and the goods which are the subject of the contract are liable to confiscation. The second principle is that no action can be maintained against an insurer of an enemy's goods or ships against capture by the British Government. The third principle is that, if the loss had taken place before the commencement of hostilities, the right of action on a policy of insurance by which the goods lost were insured is suspended during the continuance of war and revives on the restoration of peace."

Thus the effect of war on contracts may be summarised as follows : (*a*) If a loss has taken place before the outbreak of war, the assured may, on the conclusion of peace, but not before, sue on the policy.[1] (*b*) If loss takes place after the conclusion of peace, it takes place under a valid contract and the assured is entitled to recover in respect of it.[2] (*c*) If the loss takes place during hostilities whether connected with such hostilities as where a fire is occasioned in the course of military operations, whether on the part of the British Forces or their allies, or of the assured's own countrymen, the assured is prohibited from recovering on the ground of public policy.[1]

The prohibition applies only to claims made by alien enemies. British subjects can enforce claims in a British forum against alien enemies arising under contracts made before the outbreak of the war, provided they can be served[3] British insurers can accordingly enforce payment of premium against alien assured[4], or a British assured can enforce against alien insurers' claims under his policy.[5] In the words of Lord Lindley :

" When considering questions arising with an alien enemy, it is not the nationality of a person but his place of business during war that is important. An Englishman carrying on business in an enemy's country is treated as an alien enemy in considering the validity or invalidity of his commercial contract."

The stringency of this rule may be relaxed by treaty, Order in Council or license.[6]

Insurance of foreign property in war time.—Insurance of foreign property in war time may be considered from two aspects. (*a*) Insurance against acts of the Government of the insurer[7] ; (*b*) Insurance against acts of the Government of the assured.[8] For a long time the first of these was regarded as so much in accordance with the commercial interest of the country that it was not objected to on any legal grounds. Lord Mansfield supported such transactions, but not their legality. On the death of Lord Mansfield in 1793, the revolutionary war broke out in France and the Traitors Correspondence Act[9] was passed, section 4 of which declared insurance on French ships and goods to be null and void. Lord Kenyon succeeded Lord Mansfield as Chief Justice and he decided some cases in favour of the assured, and some against him. Such of the cases decided against the assured were decided on the ground of trading with the enemy. It is evident that to base the illegality of the insurance in question upon the doctrine of trading with the enemy was to fail to provide for cases where the insured voyage was between enemy ports or between an enemy and a neutral port. It was only *Furtado* v. *Rogers*[10]

1. *Janson* v. *Driefontein Consolidated Mines*, (1902) A.C. 484 at 502.
2. May on Insurance, section 39.
3. *Porter* v. *Freudenburg*, (1915) 1 K.B. 857 (C.A.).
4. *Seligman* v. *Eagle Insurance Co.*, (1917) 1 Ch. 519.
5. *Ingle (W.C.), Ltd.* v. *Manntein Insurance Co.*, (1915) 1 K.B. 227.
6. *Esposito* v. *Bowden*, (1857) 7 El. & Bl. 763 Ex. Ch. : 119 E.R. 1430.
7. *Vide* 32 Law Quar. Review, page 373.
8. 33 Law Quar. Review, page 15.
9. 33 Geo. III, Ch. 27.
10. 3 B. & P. 191 : 127 E.R. 105.

that ultimately established the illegality of these insurances on the ground of their tending to frustrate or interfere with the carrying on of hostilities by the Government of the insurer.

This case was followed in 1802 by Lord Ellenborough in *Kellner* v. *Le Mesurier*[1] and in the course of his judgment, the Chief Justice said :

"A policy containing an insurance against British capture *eo nomine* would be illegal and void upon the face of it, as being directly and obviously repugnant to the interest of the state, having an immediate tendency to render ineffectual to the extent of the indemnity created thereby all offensive operations by sea, adopted on the part of His Majesty and subjects, for the purpose of weakening the strength and diminishing the resources of the enemy. And if an insurance by a British subject made in terms against British capture would be void, an insurance indirectly producing the same effect by the application of the general terms of the insurance to the particular event, that is, of British capture which has since happened must, we are of opinion, upon principle be equally illegal; and that no peril, the subject of insurance can be covered under the generality of the terms capture, detention of princess, or the like which could not, consistently with law be specially insured against in direct and express terms."

Where the whole cause of action in such a case—contract and loss—is complete before hostilities commence, then the British insurer is liable at the suit of a foreign assured after the conclusion of peace.[2]

Regarding the second class of cases, namely, insurance against the acts of the Government of the assured it was held as early as 1809 by Lord Ellenborough in *Conway* v. *Gray*[3], that the insurer cannot recover for the artificial reason that the acts of a Government are to be assumed to be those of all his subjects and that therefore, as a man cannot insure against his own acts, he cannot insure against those of his Government.

This fantastic reasoning continued to govern the later decisions until the fallacy involved in it was exposed in 1814 in *Flindt* v. *Scott*[4], which came on appeal before the Court of Exchequer Chamber. In 1862 the case of *Aubert* v. *Gray*[5] came before the Exchequer Chamber, where Earle, C.J., said :

"The assertion that the act of the government is the act of each subject of that government is never really true. In representative governments it may have partial semblance of truth, but in despotic governments it is without that semblance."

By this judgment Lord Ellenborough's theory of identity of the government and the subject was finally exploded.

Aviation insurance.—Aviation insurance is the latest form of insurance, and is still undeveloped . The owner of an aeroplane requires to be protected (*a*) against injuries to his person ; (*b*) against damage to his aeroplane ; and (*c*) in case he is a common carrier carrying passengers and goods against his liability to his passengers; and (*d*) against his liability to the owner of the goods. Passengers by air and owners of goods carried by air would like to be protected. To cover such cases, protection is now available by means of a policy of aviation insurance. For a form of aviation insurance policy, reference may be made to the Encyclopaedia of Forms, 2nd edition, Vol. VII, page 569.

Insurance against risks to third parties for surface damage requires special treatment ; and it is not voluntary but compulsory. The use of aircraft introduces original types of risks but the general principles of law governing insurance and the usual rules of interpretation and construction of policies remain the same. One or two cases on aviation insurance may be referred to. In *Dunn* v. *Campbell*[6], the question was as to the time when the policy attached. A proposal form provided that in consideration of premium, the insurers would pay £5,000 in the event of the death of the assured by an accident, "during 12 hours in the Tarrant machine not exceeding a period of three months from the date and time of first flight." The assured lost his life in an accident to the machine at the commencement of its first flight. The accident happened when the pilot was attempting to rise but before he left the ground. It was held that the policy attached when the pilot

1. (1803) 4 East. 396 : 102 E.R. 884.
2. (1812) *Flindt* v. *Waters*, 15 East. 260 : 104 E.R. 842.
3. (1809) 10 East. 536 : 103 E.R. 879.
4. (1814) 5 Taunt 674 : 128 E.R. 856.
5. (1861) 3 B. & S. 163 : 122 E.R. 62.
6. (1920) 4 Ll. L.R. 36.

attempted to rise from the ground as the flight began then. In *Alliance Aeroplane Co.* v. *Union Insurance of Canton*[1], an aeroplane was insured for £5,000 on a flight from Hounslow to Australia. According to the terms of the "inform" clause on the cover note, which in this case was inadvertently omitted from the policy, the risk covered was "usual trial flights." The plane, 20 minutes after it left Hounslow, met with an accident and was completely destroyed. It was held that the flight to Australia was outside the risk covered. As there was a clause in the policy excepting racing risk and as the aeroplane was engaged in a race, the plaintiff failed to recover on that ground also.

Compulsory third party insurance of aircraft for surface damage.—Another form of insurance of recent origin is compulsory, namely, third party insurance for surface damage. The development of aerial navigation brought before the nations of the world the problem whether the air space over a state was to be free to all nations, or whether the sovereignty of states is to be extended to the air space over them on the basis of the legal maxim "*Cujus est solum ejus et usque ad coelum et ad inferos* (in whomsoever is the soil, his it is to the vault of heaven and to the regions beneath). With a view to arrive at a settlement internationally, the conference of Paris of 1910 was held; and owing to a conflict of opinion between the British delegates who claimed that the sovereignty of states should extend over the whole air space above its territories *usque ad coelum*, and the German delegates who claimed absolute freedom over the whole air space, the conference came to no definite conclusions. The Great European War of 1914 to 1919 reinforced the view of the British delegates at the Paris conference of 1910. The special committee which was appointed by the Civil Aerial Transport Committee in England in 1918 to advise as to the policy and necessity of legislation, in its report, suggested the possibility of requiring all foreign aircraft to insure against risks of damage to third parties as a condition of their registration and licence. The main committee in their interim report of 1919 thought that the possibility of surface damage done by foreign aircraft visiting England requires special consideration, seeing that unless an aircraft itself was damaged, the owner of it was in a peculiarly advantageous position to escape from the legal consequences of his act. Nothing followed upon these recommendations.

(*A*) *International.*—A convention at Rome for the unification of certain rules relating to surface damage was entered into between Austria, Belgium, Brazil, Czechoslovakia, Denmark, France, Germany, Great Britain, North Ireland, Guatemala, Honduras, India, Italy, Japan, Lithuiana, The Netherlands, Norway, Poland, Rumania, Salvador, San Marino, The Holy Sea, Spain, Switzerland, the United States of America, Turkey and Yugoslavia. The parties were called the high contracting parties. Article one provides that they agreed to take the necessary measures to give effect to the rules established by that convention. The purpose of the convention was first to limit the liability of aircraft engaged in international flight in and over the territory of the contracting states for any surface damage caused to them and secondly to provide for schemes of third party compulsory insurance that in those cases in which liability has been incurred there would be a reasonable prospect that the loss would be met. By Article 14 (*b*) of the Rome Convention of 1933, the operator of an aircraft may not avail himself of the provisions of the convention limiting his liability if he had not furnished one of the securities prescribed by the convention, or if the securities furnished were not valid, or did not cover the liability of the operator for the damage caused under the conditions and the limitations of this convention. By Article 4, "operator of the aircraft" means any person who has an aircraft at his disposal and who makes use of it for his own account. If the name of the operator is not inscribed in the aero-nautical register or in some other official document, the owner is deemed to be the operator until proof to the contrary. The security referred to in article 14 (*b*) may be any

1. (1920) 5 Ll. L.R. 406.

one of three kinds : (*a*) a policy of insurance, (*b*) a deposit, or (*c*) a bank guarantee.

With regard to the policy of insurance, article 12 (1) provided that every aircraft registered in the territory of a High Contracting Party shall for the purpose of flying above the territory of another contracting party, be insured within the limits fixed by article 8, in respect of the damages to which the convention relates with a state-insurance-institution or with an insurer authorised in the territory in which the aircraft is registered to undertake such risk. The limit in the said article 8 is at the rate of 250 gold French francs for every kilogramme weight of the aircraft, with a limit varying between a maximum liability of not less than 600,000 francs, and more than 200,000 francs. By article 12 (3) the indemnity by way of insurance must be first appropriated specifically and preferentially to the payment of compensation due in respect of the damages to which this convention relates.

By article 12 (2) the municipal law of each High Contracting Party may in whole or in part substitute for insurance another guarantee against the risk to which the convention relates.

By article 20 (1) the terms of the convention are applicable in all cases where damage is caused on the surface in the territory of one High Contracting Party by an aircraft registered in the territory of another High Contracting Party.

The first obligation undertaken by the parties to the Rome convention was that they would take the necessary measures to give effect to the rules established by the convention, *vide* article 12 (2) also.

(*B*) *Compulsory insurance of aircraft in the United Kingdom.*—The Gorrel Committee report presented to Parliament in 1934 recommended the introduction of a scheme of compulsory third party insurance or adequate alternative indemnity against the damage caused by civil aircraft to persons or property on the ground, provided that the liability for that damage was limited in amount in the manner similar to that of the Rome convention of 1933. This is what part III of the Air Navigation Act, 1936, purports to do.[1] The provisions of the Air Nagivation Act, 1936, correspond as closely as possible with the scheme as introduced in respect to motor traffic and contained in the Road Traffic Acts of 1930[2] and 1934[3]. The main provisions of the Air Navigation Act, 1936, part III (sections 15 to 22) relate to compulsory insurance of aircraft in the United Kingdom. Section 16 (1) provides that a person is not to fly an aircraft or cause or permit it to fly unless there is in force in relation to the flying of that aircraft proper cover for the liability which may be incurred for the surface damage to third parties. The section further provides that the cover contemplated by it is (*a*) a policy of insurance issued by an authorised insurer which insures the owner of the aircraft against all liability which he may incur in respect of damage or loss caused to persons or property on land or water by or by any person in, or any article or person falling from, the aircraft while in flight, taking off or landing ; or (*b*) a security given by an authorised insurer of securities, being a security which consists of an undertaking by the giver of the security to make good, subject to any restrictions or conditions specified therein, any failure by the owner of the aircraft to discharge any such liability. By section 17, the hirer of the aircraft is to be treated as owner where the aircraft has been demised in good faith, let or hired out for any period exceeding 14 days to any other insurer by the owner, and no pilot, commander, navigator, or operating member of the crew of the aircract is in the employment of the owner. By section 16, the provisions as to compulsory insurance are not to apply to an aircraft which at the material time is owned by a local or police authority. For the purpose of issuing a policy of insurance to cover the risks in respect of surface damage to third parties, an authorised insurer is an insurance company or an under-writer in whose case the requirements of the Assurance Companies Act, 1909[4], as amended with respect to deposit or guarantees by under-writers are complied with. Any person who flies or causes or permits any other person to fly an aircraft unless there is in force

1. 26 Geo. 5 & 1 Edw. 8, Ch. 44.
2. 20 & 21 Geo. 5, Ch. 43.
3. 24 & 25 Geo. 5, Ch. 50.
4. 9 Edw. 7, C. 49.

in relation to the flying of the aircraft by that person or that other person, either a policy of insurance or a security given by an authorised giver of security, commits an offence which is punishable with fine not exceeding £200 or imprisonment for a term not exceeding six months or with both such fine and such imprisonment.

Certificate of insurance.—Section 18[1] provides that with regard to the issue of a policy for the purpose of covering third party risks in the event of surface damage by aircraft the exact time at which the policy is covered should be mentioned. A policy of insurance is to be of no effect unless and until there is delivered by the insurer to the person by whom the policy is effected, or by the giver of security to the person to whom it is given a " certificate of insurance or certificate of security."

Rights and remedies in respect of policies.—The third schedule of the air navigation Act, 1936,[2] provides for the rights and remedies in respect of policies of insurances and the giving of securities in relation to third party liability in respect of surface damage by an aircraft. Para. 1 of schedule 3 provides that where a certificate of insurance has been delivered in connection with a policy of insurance, so much of the policy as purports to restrict or attach conditions to the insurance of any person insured by it as subject to what follows, to be of no effect with respect to any liability required to be covered by a policy under Part III of the Act of 1936.[2]

But nothing is to require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of a person which is covered by the policy by virtue only of para. 1, shall be recoverable hy the insurer from that person. But there may be limitations to the general prohibition against restricting or attaching conditions to the policy of insurance. It may have a term limiting the period of insurance, or limiting the loss or damage insured against, to loss or damage caused to persons or property in the United Kingdom or providing that the insurer does not undertake to indemnify the person insured in respect of any liability to pay compensation under the Workmen's Compensation Act.

Para. 1 (2) (*a*) (*vi*) of schedule III says that the insurer is to be at liberty to relieve himself from liability by providing that he will not be liable to pay any claim under the policy, if, at the time of the happening of the event which was the cause of loss or damage giving rise to the claim, a licence to fly was not in force in respect of the aircraft in connection with which the claim is made. Para. 1 (2) (*b*) provides that the insurer is also entitled to protect himself in a policy of insurance by providing that he shall not be liable to pay any claim in respect of any loss or damage which is caused or contributed to by conditions of war, riot, or civil commotion. Para. 2 (3) prescribes the statutory method by the use of which an insurer can relieve himself from liability in those cases in which the assured has obtained a policy by the non-disclosure of a material particular, apart from any provision in the policy which purports to enable him to do so.

When a policy is cancelled, the person to whom the certificate was delivered shall, within 7 days from the taking effect of the cancellation, surrender the certificate of insurance to the insurer or if it has been lost or destroyed send a written notice to that effect to the insurer.

Third party rights against insurers of aircraft.—The bankruptcy of the insured person is not to affect claims by third parties in relation to claims against them for surface damage which must be compulsorily protected by insurance. Where a certificate of insurance has been delivered in connection with a policy of insurance and the assured has become a bankrupt or if being a company is wound up or an order is made for the administration of the deceased assured's estate according to the law of bankruptcy, nothing is to affect the liability of the assured which is required to be covered, in accordance with part III of the Air Navigation Act of 1936 and at the same time nothing is to affect any rights under the Third Parties (Rights against Insured) Act, 1930,[3] which the person to whom the liability was

1. 9 Edw. 7, C. 49.
2. 26 Geo. 5 and 1 Edw. 8, C. 44.
3. 20 & 21 Geo. 5, C. 25.

incurred has against the insurer. In such a case of the assured's bankruptcy after he has incurred a liability to third parties, all his rights against the insurer are transferred to such third parties.

Compulsory insurance of motor vehicles against third party risk in the United Kingdom.—A policy of compulsory motor vehicle insurance is intended to protect the assured against his liabilities to third parties arising out of accident caused by the use of motor vehicles on the road. The liability may be for the death or bodily injury or for damage to property. In addition, the policy usually covers the vehicle and its accessories but it is only optional with the assured to insure the vehicle and its accessories. Under part II of the RoadTraffic Act, 1930,[1] provision is made for insurance against third party risks arising out of the use of the motor vehicles. Section 35 of the Act provides that it shall not be lawful for any person to use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person and that other person as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of part II of the Act. Violation of this section is made punishable by fine not exceeding £50 or imprisonment for a term not exceeding 3 months. A person so convicted shall be disqualified from holding a licence to drive a motor vehicle for twelve months from the date of conviction.

Compulsory Motor Vehicles Insurance in India.—The Motor Vehicles Act IV of 1939 has made provision for compulsory insurance of motor vehicles against third party risks in Chapter VIII. But the chapter shall not have effect until the 1st day of July, 1943. Sections 93 to 111 deal with it. The provisions contained in those sections are somewhat similar to those contained in part III and Third schedule of the Air Navigation Act of 1936[2] and under part II of the Road Traffic Act of 1930[1]. No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person a policy of insurance by an authorised insurer. This does not apply to any vehicle owned by the Central Government. A person issuing a policy of insurance shall be liable to indemnify the person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. In the event of the insured person becoming insolvent or in the event of an insured company becoming wound up, if either before or after the event any liability is incurred by the insured person, his rights against the insurer under the contract, notwithstanding anything to the contrary in any provision of law, be transferred to the third party to whom the liability was incurred. For further details, reference may be made to sections 93 to 111 of the Motor Vehicles Act IV of 1939.

War Risks Insurance.—On or about the outbreak of the recent war, a new kind of insurance known as " War Risks Insurance " has come into existence, in England in 1939 and in India in 1940. A similar scheme is being enacted by the Federal Government of the Commonwealth of the Australia now.

War Risks Insurance Act of 1939[3].—The object of the War Risks Insurance Act of 1939 is to cover marine risks and risks caused to sellers of goods and commodities. The Act is passed for making provisions for authorising the Board of Trade, during war time, to undertake the re-insurance and insurance of ships, and of cargoes in such ships or aircraft; for the payment of the Board of Trade, in time of war, of compensation in respect of such goods lost or damaged in transit and for requiring persons who are sellers of goods to insure against war risks. For the purpose of seeing that the ships are not laid up and commerce not interrupted by lack of insurance facilities the Board of Trade may make agreements with any person for insurance of any King's enemy risks against which a British ship or cargoes on it or on an aircraft are exposed for the time being. The Board of Trade may also make agreements for insurance of goods while they are in transit within the United Kingdom and Isle of Man having been consigned to those places from outside,

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1. 20 & 21 Geo. 5, C. 43.
2. 26 Geo. 5 and 1 Edw. 8, C. 44.
3. 2 & 3 Geo. 6, Ch. 57.

or while they are in transit in a place outside the United Kingdom and Isle of Man having been consigned to those places outside from the United Kingdom and Isle of Man. Further in the event of war, the Board of Trade may, by notice published in such manner as the Board thinks fit, put into operation also a scheme known as, "The Commodity Insurance Scheme" whereby the Board undertakes, in the United Kingdom, in relation to the person carrying on business as seller of goods, in the United Kingdom, the liabilities of insuring such persons against war risks in respect of such goods. A premium will have to be paid and it will be recoverable as a civil debt. After the "Commodity Insurance Scheme" has been put into force, the Board may make an order, prohibiting the seller of such goods from carrying on any business in the United Kingdom unless there is in force an insurance in respect of them. Agricultural products and cattle-stock are also included in the term "goods."

War Damage Act.—The War Risks Insurance Act of 1939 applies only to movables. The English War Damage Act, 1941,[1] was enacted to cover damages caused by war to immovable property. By this Act a percentage of compensation and not full compensation for loss caused to such property is assured by the State to the owner or the person entitled to it. The proportion of compensation actually payable will be decided by Parliament.

Indian War Risks Insurance Ordinance, No. IX of 1940.—To cover war risks against certain kinds of goods mentioned in the schedule to the Ordinance, the War Risks Insurance Ordinance No. IX of 1940 was passed. From 1st October, 1940 to 1st November, 1940, it was only optional, but from 1st November, 1940, it was made compulsory in respect of goods above Rs. 20,000 in value. Roughly speaking, the Act excludes all goods which cannot be destroyed at all or which could be very easily destroyed by fire. The rate of premium payable at the commencement of the Ordinance in 1940 was one anna for every Rs. 100. Later it has been raised to 2 annas, the increase being due to the nearer approach of danger. The Government of India have now definitely decided to introduce legislation at an early date to cover the establishment of a war risk insurance scheme to cover buildings, machinery and plant of factories. An important point is that the principle followed is that of a fixed single premium payable by instalments. The rate of premium will be uniform for all factories wherever situated and insurance will be compulsory.

Special War Time Property Insurance in the Commonwealth of Australia.—Probably the scheme of insurance, known as Special War Time Insurance, that is being introduced by the Federal Government of the Commonwealth of Australia is more comprehensive as it includes all kinds of movables and immovables, inclusive of commodities, plant, machinery, office furniture, business and professional equipment, live-stock, crops, trade-stock, fencing, private chattel such as personal effects and home furniture and fixed property of all kinds of buildings. The scheme of insurance is compulsory to all such property whose value exceeds £1,000 but voluntary if its value is below £1,000. In regard to all property except buildings and fixed property, the Federal Government will insure conjointly with private insurance companies. As regard buildings and fixed property, the Federal Government will alone insure. All private-war-damage insurance will cease when the Federal Scheme comes into operation. An expert commission, styled as the Federal War Insurance Commission will fix the rate of premium and of payment for services rendered by private companies. Insurance of buildings and fixed property will be effected through a separate fund. All owners of buildings and fixed property will contribute to the fund at an initial rate of 4 shillings per £100 per annum on the capital value. Churches and schools, public hospitals and charitable institutions are covered free of charge. Any surplus in the amount collected will be utilised for post-war purposes. A scheme similar to this may be brought into force in India.

[*Concluded.*]

1. War Damage Act, 1941, 4 & 5 Geo. 6, 1941.

SUMMARY OF ENGLISH CASES.

In re., St. James' Court Estate, Ltd., (1944) 1 Ch. 6.

Companies Act (1929), *section* 46 (1)—*Conversion of issued preference into redeemable preference shares by scheme of arrangement—Not authorised by section* 46 (1).

The conversion of issued preference shares into redeemable preference shares is clearly not within the Companies Act, 1929, section 46 (1) which says: ". . . . . a company limited by shares may, if so authorised by its articles, issue preference shares which are or at the option of the company are to be liable to be redeemed". A conversion of that kind can take place only if the steps appropriate to a reduction and simultaneous increase of capital have been taken.

Burrows, *In re. Ex parte* Official Receiver *v.* Steel, (1944) 1 Ch. 49.

Bankruptcy—Debtor absenting himself with intent to delay and defeat creditors—Act of insolvency—Relation back of trustee's title—If can extend beyond three months before petition.

On May 1, 1942, with intent to defeat or delay his creditors the debtor departed from his dwelling house and on a creditor's petition, dated the 20th October, 1942, a receiving order was made on December 1, 1942. On a question as to the relation back of the title of the trustee in bankruptcy under section 37 (1) of the Bankruptcy Act, 1914,

Held: The absenting of a debtor with intent to defeat or delay his creditors is a continuing act of bankruptcy. But the trustee cannot in view of section 4 (1) of the Bankruptcy Act rely on any act of bankruptcy which occurred more than three months before the date of the presentation of the petition.

Accordingly the trustee in bankruptcy cannot claim his title as from May 1, 1942. The period of relation back is limited to three months before the presentation of the petition.

Ashworth *v.* McGuirk & Co., Ltd., (1944) 1 K.B. 1 (C.A.).

Factory Act—Docks Regulations 1934, *rule* 43—*Duty of employer to employ signaller during unloading of ships—Absolute duty—Injury to workman during temporary absence of signaller—Liability of employer.*

The Docks Regulation, 1934, rule 43 requires that a signaller "shall be employed" during unloading of ships. Under the Regulation the employer should not merely enter into a contract appointing a man to act as signaller, but is under an absolute obligation to keep the man there doing the work. The words "shall be employed" must not be regarded as being satisfied by the mere existence of a contract of employment but they are used rather in the sense of the man being actually engaged in the operation than being employed contractually to carry it out. Accordingly where a workman is injured during the temporary absence of the signaller in the course of his employment the employer is liable for the breach of the statutory obligation to "employ" the signaller.

Dickinson *v.* St. Aubyn, (1944) 1 K.B. 10.

Lease—Lease for a term of seven years with proviso for its determination at the end of five years if the tenant should so desire—Covenant for decorative repairs to be executed by tenant in the last quarter of "said term"—Tenant exercising option to determine lease at the end of fifth year—Liability to carry out repairs under the covenant.

A lease for a term of seven years with a proviso for its determination by the tenant at the end of five years if the tenant should so desire contained a covenant for decorative repairs to be executed by the tenant in the last quarter of the "said term". The tenant who had exercised the option to determine the lease at the end of five years contended that only the *habendum* must be looked at and as the *habendum* provided that the lease is to be for seven years the tenant's liability to execute the repairs does not arise unless the lease runs for that period and that the proviso cannot enlarge his liability.

Held, negativing the contention:—The proviso is one of the strongest ways in which an intention to create a condition can be expressed. If the lessee exercises the option given by the proviso the last quarter of the term becomes the last quarter of the fifth year and the landlord is entitled to enforce the covenant to execute decorative repairs,

BISHOP & BAXTER *v.* ANGLO-EASTERN TRADING & INDUSTRIAL CO., LTD., (1943) 2 All.E. R. 598: (1944) 1 K.B. 12 (C.A.).

Sale of goods—Contract—Acceptance of offer "subject to war clause"—If completed contract.

An offer from an intending purchaser of goods was accepted by the seller "subject to war clause". There were many kinds of war clauses in use and it did not appear that any particular war clause was in the minds of the parties. In the circumstances, *held,* that there was no completed contract as there was no *consensus ad idem.* 33 T. L. R. 475, followed.

LEAVEY & CO. *v.* HIRST & CO., LTD., (1944) 1 K.B. 24 (C.A.): (1943) 2 All.E.R. 581.

Practice—Trial of suit—Deviation from pleadings—Duty to have pleadings appropriately amended.

Contract—Sale of goods—Damages for breach in respect of goods not replaceable—Measure of.

It is the duty of both judge and counsel on both sides to see that the pleadings are amended if there is to be a substantial departure from the pleadings at the trial of the action.

In respect of a breach of contract for sale of goods which cannot be replaced in the market, the purchaser is entitled to have as damages the profit which he would have made if the contract had been carried out.

WARE *v.* GARSTON HAULAGE & CO., LTD., (1943) 2 All. E. R. 558 (C.A.): (1944) 1 K.B. 30.

Tort—Lorry with trailer left on the road without a light in the night—Motor-cyclist colliding with it—Liability of owners of lorry.

If a lorry was left on the road with the trailer in fact unlighted so that it could not be seen, in the night it would be a dangerous obstruction in the road and a nuisance. If the light had gone out after being left there it is the misfortune of those responsible for seeing that the trailer was lighted but not a reason for saying that a motor-cyclist who drove into the lorry and sustained injuries is not entitled to recover damages. The plaintiff is entitled to succeed even apart from any question of negligence.

FIELD *v.* HOPKINSON, (1944) 1 K.B. 42.

Criminal trial—Breach of statutory "obligation to keep or cause to be kept an accurate record" of sales otherwise than by retail—Charge of—If bad for uncertainty.

If an enactment forbids the doing of act *A* or act *B,* it creates two offences and a conviction on one information charging both in the alternative is bad for uncertainty, but if the enactment creates a duty to do either *A* or *B,* there must to constitute an offence, be a failure to do both acts.

Where a person is charged with having failed "to keep or cause to be kept an accurate record" of purchases, sales and stocks as required by an Emergency order in respect of certain goods, that person can be convicted on the charge. It cannot be said that such conviction will be bad for uncertainty as the charge was of one offence only and of two offences in the alternative.

LUBORSKY *v.* SNELLING; and, COHEN *v.* SNELLING, (1943) 2 All. E. R. 577 (C.A.): (1944) 1 K.B. 44 (C.A.).

Fatal Accidents Act (1846), *section 3—Limitation of one year under—If can be pleaded by an insurance company which has admitted liability during the negotiations.*

On 28th December, 1940, the respondent driving a motor car negligently ran into the husband and step-daughter of the appellant when the two were walking on the footpath and caused injuries to them. The husband died next day. The defendant was a serving soldier. Negligence could not be disputed. The respondent, as the driver, was insured against third party liability as required by the Road Traffic Act, under a policy taken out by his employers as owners of the motor car. Negotiations proceeded between the insurance company and the appellants' solicitor on the basis of admitted liability. An action

had to be taken for apportionment of damages. A first action had to be withdrawn as letters of administration had not been obtained, and the action commenced after the obtaining of letters of administration was more than twelve months after the death.

Held: That the defendants were debarred from relying on the plea of limitation under section 3 of the Fatal Accidents Act as the liability had been admitted.

CARLTONA *v.* COMMISSIONERS OF WORKS AND OTHERS, (1943) 2 All.E.R. 560 (C.A.).

Defence Regulations—Requisitioning of premises by competent authority—Court has no power to inquire into the reasonableness, policy, the sense, etc., of the transaction.

In respect of a requisitioning of premises under the Defence Regulations; *Held*: Where a regulation commits to an executive authority the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the Courts to investigate the grounds or reasonableness of the decision in the absence of an allegation of bad faith. If it were not so, it would mean that the Courts would be made responsible for carrying on the executive government on these important matters. All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith. The Court has no power to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction.

BLACKWELL *v.* BLACKWELL, (1943) 2 All.E.R. 579 (C.A.).

Husband and wife—Separation—Money paid by husband to wife for expenses of housekeeping while living together—Savings out of—Right of husband to.

Savings made by a wife out of money allowed to her by her husband for housekeeping purposes belongs to the husband. On a separation between them the money so saved standing to the wife's credit in a bank account will be treated as property of the husband.

KENNEDY *v.* DANDRICK, (1943) 2 All.E.R. 606 (Ch.D.).

Practice—Action to set aside judgment on the ground of fraud—Plaintiff cannot be put on terms as a condition to proceeding with his action—R.S.C., Order 27, rule 15 *and Order* 36, *rule* 33*—Applicability.*

A judgment which it was alleged was induced by fraud is not a judgment delivered by default within the meaning of R.S.C., Order 27, rule 15. In an action to set aside a judgment on the ground of fraud it is not open to the Court to put the plaintiff upon terms as to costs and deposit of moneys in Court as a condition of proceeding with his action.

HOCKIN *v.* AHLQUIST BROTHERS, LTD., (1943) 2 All.E.R. 722 (K.B.D.).

Evidence—Best evidence to be produced—Limits to supposed rule—Evidence of people who have seen them as to condition of chattels in issue—Admissibility—Production of the chattels—Not essential.

Evidence about the nature of chattels can be given by people who have seen them and can speak to their condition. To suppose that there ought to be produced in Court all the articles about which issues are raised in a great variety of cases would lead to consequences which would show how impossible the rule would be in practice,. Accordingly in a charge of breach of the provisions of the Making of Civilian Clothing (Restrictions) Order 1942, by making garments with more than the permitted number of pockets and buttons, the charge can be sufficiently proved by the evidence of the officer who had seen the clothing, and production of such clothing is unnecessary.

(1892) 2 Q.B. 113 and L.R. 2 C.C.R. 128, relied on.

JOTTINGS.

THE MADRAS PROVINCIAL LAWYERS' CONFERENCE, KUMBAKONAM.

Presidential Address delivered by Sir Alladi Krishnaswami Aiyar.—This is the second occasion on which I have the pleasure and privilege of addressing a gathering of lawyers in this notable city of South India, the first occasion being shortly after I was appointed Advocate-General of this Province in the year 1929. I thank you most heartily for the

honour you have done me and for the opportunity you have afforded me on this occasion by even postponing your deliberations to suit my convenience.

There are various problems in which the legal profession is interested—a sound system of legal education which would ensure a high standard of efficiency on the part of an entrant into the profession, and also promote the academic pursuit of law as a social science; the problem of over-crowding and undercutting; the regulation of fees with due regard to the interests of a skilled profession and of the litigant public; the need for organised help to members of the profession who, through no fault of their own, might fall on evil days; the promotion of *espirit de corps* among the members of the profession not in a sectional or class-spirit but in a spirit of service to the public. To a very large extent, some of these problems relating to a Bar extending over a whole presidency will have to be solved locally with tact, wisdom and a sense of fair-play.

In dealing with the subject of professional ethics and rules of conduct and advocacy, without in any way minimising the importance of the rulings of Bar Councils, the resolutions of professional associations, or the guidance given by the judges from time to time, what needs emphasis is that common honesty, straight dealing, active sympathy with our struggling brethren, and a genuine appreciation of talent wherever found, are principles universal in their character and applicable to every walk of life.

In regard to the subject of legal education in this Presidency I am very keen that the standard should be kept as high as possible with the back-ground of a high general education and culture. One has no right to enter the profession and claim to minister to the needs of the public without the necessary equipment and training. Incessant study, scrupulous attention to the interests of the client, fair dealing with the Court and a spirit of independence in espousing the cause of the client without fear or favour, must continue to be the watchwords of every entrant into the profession. In the complex conditions of modern society, departments of the law are getting ramified and specialisation of some sort has become inevitable. There is need for specialists in Commercial law, Banking, Insurance and Income-tax law. The subjects of Constitutional and International law have also assumed special importance.

There is a sacred and most important function of the profession which I cannot refrain from alluding to in this gathering of lawyers, *viz.*, its function as the guardian of the civil liberties of the people in normal times and during times of war of such liberties as are vouchsafed to them consistently with the due prosecution of the war. It is an old adage (none the less true because it is old) that eternal vigilance is the price of liberty. In these days of Ordinances, of innumerable Acts, Rules and Orders, passed by various authorities which are legion, regulating the life and liberty of the citizen, I would appeal to every Bar Association to equip itself with the necessary materials to enable the members of the profession to serve the interests of the clients with efficiency and promptness. While there is no need for the profession to assume in every case that there is wilful default or transgression of the law on the part of the authorities, the profession need not be under the impression either that the authorities are always keeping themselves strictly within the limits of the law. In democratic as well as non-democratic countries, it is common knowledge that administrative law is occupying a wide field at the present day. This tendency is manifest in England, in the Dominions, and in America, in spite of its constitutional doctrine of the separation of powers. Despite the protests of Lord Wright and Lord Hewart in the pre-war period, I have very great doubts, having regard to the schemes of large-scale planning and industrial re-construction, and the need for devolution of authority in the post-war world in the interests of efficiency, whether there is any reasonable likelihood of an abatement of this tendency even after the war. India is no exception to the rule and there is no likelihood of its following a different track. Under the present constitution, there is a further point to be noticed in regard to the Indian scheme of Government. The Governor-General is invested with supreme powers of legislation co-extensive with those of the Indian Legislature, and the effect of the recent decisions of the Federal Court is that there is no difference in substance between the powers of the Indian Legislature and those of the Governor-General in regard to the Ordinance-making power. It may be of interest to you to note that within the last few years there is hardly any subject of importance in regard to which the Ordinance-making power has not been invoked and that the total number of Ordinances passed by the Governor-General far outweights the number of Acts passed by the Indian Legislature. There is no similar authority anywhere in the English-speaking world who has anything like the powers of legislation of the Governor-General. I would suggest the formation of Committees in every Bar Association who will make a special study of particular branches of statute law and offer their suggestions for their modification, repeal, or amendment.

The idea also of a panel of lawyers willing and ready to offer their services when the liberty of a subject is threatened must be carefully considered by every Bar Association in this Presidency. The administration of criminal justice on sound lines is of even greater importance than the administration of civil justice. How greatly the value of the services of a lawyer is appreciated in the maintenance of liberty will be clear from the construction

put upon the due process clause by the Supreme Court in the United States. You are aware that, under the scheme of the American Constitution, the administration of criminal law is outside the concern of the Federal judiciary and the Federal Government. Errors of procedure, incorrect appreciation of the principles of criminal law and the admission of even inadmissible evidence leading to a miscarriage of justice can only be corrected by State Courts. But a denial of the right of a citizen to be represented by Counsel in the course of the hearing of a cause, civil or criminal, is regarded as offending the due process clause in the constitution and the Supreme Court has held that any legislation denying the right of a citizen to be represented by Counsel is *ultra vires* and unconstitutional. In the words of Justice Sutherland, "the necessity of Counsel is so imperative that the failure of a trial Court to secure an effective appointment of Counsel is a denial of due process." You may be interested to know that even in Russia, under the Advocacy Act of 1922 and the Judiciary Act of 1926 with its sweeping reforms in regard to the judiciary and procedure, a collegium of lawyers was created and its members were made responsible for the legal aid of a party put up for trial. The collegium is a self-governing institution along the lines of other Soviet institutions. I would ask you, gentlemen, to carefully study recent enactments in this country, the extent to which legal aid is allowed or denied, and the restrictions, if any, on the freedom to engage Counsel, and zealously guard the rights of the public and in so doing of yourselves. The air is full of the freedoms for which the United nations are fighting. While the extent to which these freedoms are permitted depends upon the law of the land for the time being, the zealous guarding of such freedoms as are recognized is in your hands. In this connection I may make a passing reference to the fact that while in England and I may add in India also, Freedom of the Press and Freedom of Conscience are common law rights subject to interference by the legislature, under the American Constitution they are constitutional rights which cannot be interfered with by the legislatures. The American citizen has thus secured to him a much greater freedom of religion, expression and assembly than even the people of Great Britain enjoy.

Earlier in my address I have alluded to the importance of the study of Constitutional Law, International Law and Comparative Jurisprudence. I have heard oftentimes the remark that International law has lost all its meaning and sanction at the present day, at any rate the study of International law is not the concern of a subject nation. I do not share that view. I am confident that when the united nations succeed, as they are bound to and as they must in the interests of a better future for this world, there are likely to be profound and far-reaching changes in the main concepts of International law. Even as the war is being waged, the whole conception of neutrality based upon the theory that each nation is sovereign in its own sphere, and that war between two nations, whether one party or the other is in the right, is no concern of other nations, is undergoing radical changes. The League Covenant and the Kellog Pact prior to the War, the formulation of differential attitude and policy adumbrated by America towards the belligerents during the progress of the War have given a serious blow to the theory of neutrality as propounded by earlier writers on International law.

Closely allied to the earlier conception of neutrality in war is the theory that the kind of Government obtaining in a particular country or in particular parts, say, of the British Commonwealth or of the British Empire is no concern of the other nations. This theory is open to challenge if only on the ground that the war is being fought out avowedly for certain basic principles and that the future peace of the world depends as much upon democratic forms of Government being established and secured in Asia as in Europe. Asia cannot be segregated from Europe nor can India, China and West Asia be segregated from one another. There is the hard fact of peoples with ancient civilizations breathing the air of new ideas of freedom and yearning for a new dispensation in Asia as in Europe. The future peace of the world cannot be secured if any theory of domination of one race over another is still to hold the field or if democracy is to be the ruling principle of Governments in Europe and not in Asia or if the old system of secret treaties, special alliances, and zones of influence is to continue.

I would also impress upon my lawyer friends the need for a study of constitutional problems not merely in the British Commonwealth but in the Americas and elsewhere with a view to assist the solution, and not the creation, of fresh difficulties. In this connection I would remind you of an incident reported in the books that on the eve of the formation of the South African Union after the Transvaal War, when the delegates met under the presidency of the then Chief Justice of South Africa, they made a resolve not to leave the place of meeting until and unless a solution was reached in regard to the formation of the Union.

There is one other subject which merits your special study and that is Comparative Jurisprudence including Soviet Jurisprudence. Leaving aside the Soviet attitude to property and the reconstruction of society on an entirely new basis, I have been much struck by the experiments made in Russia, as narrated in recent books on the subject, in the field of criminal jurisprudence, the reform of the criminal and the re-shaping of him into a useful and enlightened citizen.

Having ventured on certain observations of general interest, I should like to say a word or two in regard to matters of immediate practical interest to you. There is no denying the fact that the judicial system and the legal institutions in this country have been built on the model of English institutions. If the main principles of the English judicial system are not to be kept in view in the fashioning of legal institutions and in the recruitment to the judiciary, you rob the system of its chief merit. The English method of recruiting to the Bench and the English case-law system are closely inter-connected. Even in matters where the law has been codified (*vide* the Sale of Goods Act, the Partnership Act and the Bills of Exchange Act), codification is built on a whole mass of case-law which has to be rummaged to understand the implications of particular sections. If the English system of the administration of justice deservedly stands high in the matter of judicial independence and the intellectual grasp exhibited by the judges, it is not a little due to the fact that a judge recruited from the Bar is able easily to master the complexities of a complicated litigation. But, for the system to succeed it is necessary that the recruitment should rest on merit and merit alone. There is no point in recruiting an indifferent lawyer from the Bar with no particular pretensions to legal ability or training, merely because he is a lawyer presumed to be practising at the Bar. The insistence upon ability of a high order does not of course imply that no importance is to be attached to character, integrity and similar factors which of course are taken for granted in any selection.

There is one other subject to which I may make a passing reference and that is, the relations between the Bench and the Bar. Generally, it is gratifying to note that harmonious relations subsist between the Bench and the Bar of this Presidency. Both the Bench and the Bar are sister institutions engaged in the very important task of the administration of justice in which the primary party concerned is the citizen or the litigant. Any discord between the two institutions should be viewed with concern by the Bench and the Bar alike, as that might defeat the main purpose for which the institutions exist. The Bench need not suffer from any superiority complex nor the Bar from any inferiority complex. The Advocate will have to discharge his duties fearlessly and to the best of his ability. The Judge will have to hold the scales even remembering always that the primary parties concerned are the litigants whose cause comes up for decision before him. Occasionally we hear of a breeze in Court, of a resolution passed by a Bar Association in regard to the temper exhibited by a judge. I trust that such instances will be few and far between and that the great moral purpose underlying the administration of justice will be kept in view by the Bench and the Bar alike.

There is only one other topic which I would allude to before I close my remarks,—and that is a matter which has been engaging the attention of the Bar and some of the Bar Councils—namely, the right point of approach in regard to the proceedings to be taken against members of the Bar who have been convicted of political offences not involving violence. Under the law as it stands and as interpreted by the Madras High Court for the last several years, any person convicted of a political offence, whether involving violence or not, is liable to be disenrolled, though a somewhat different view has been taken in the decisions of the Calcutta High Court. It is urged with considerable force that the procedure adopted involves a double punishment which is uncalled for. This subject merits your serious consideration and you will have to see whether it is possible to urge upon the Government to amend the Bar Councils Act so as to make it clear that a mere conviction for a political offence not involving violence should not carry with it a liability to be struck off the rolls or to be otherwise punished under the Bar Councils Act.

I would close my address with a reiteration of some of the views which I have given expression to on other platforms and on other public occasions. Law is a social science. It is not and cannot be static in its character. There is a danger of a lawyer being imprisoned by his own learning. There is the necessity for old principles being re-formulated to suit a new age and receiving an accession of fresh vitality and strength. Time and again there must be a reassessment of values to suit individual and national welfare. Law reform ought to be as much a subject of interest to the practising lawyer as advocacy in Court as there are natural limitations to judge-made law in keeping pace with the progress of society. It is only when the lawyer discharges this double duty that he will justify himself as a member of an enlightened profession and as a useful citizen.

Unveiling of Sir A. Krishnaswami Aiyar's portrait.—A pleasant function took place, when on the 25th April, a life-size portrait of Sir Alladi Krishnaswami Aiyar—the gift of the Sir Alladi Krishnaswami Aiyar Sashtiyabdapurthi Celebration Committee to the Madras Advocates' Association—was unveiled by Sir M. Venkatasubba Rao at the premises of the Advocates' Association in the presence of a large and distinguished gathering of Judges and lawyers.

Mr. T. R. Venkatarama Sastriar, the President of the Sashtiyabdapurthi Celebration Committee, in requesting Sir M. Venkatasubba Rao to unveil the portrait referred to the eminence of Sir Alladi as a lawyer, the high distinction that he had achieved in Madras and before the Federal Court and the great services he had rendered to the legal profession.

In unveiling the portrait, Sir M. Venkatasubba Rao said:

"Let me first pay my tribute to Mr. Chamkur the talented artist who has executed this portrait with complete fidelity. This would be a treasured addition to the portraits adorning your walls and Sir Alladi would be among the most illustrious of this galaxy of talent.

Mr. Chamkur has portrayed the outer man. I wonder whether to delineate the inner man—the mind and soul of Sir Alladi—devolves on me. I shall depict him to-day as a lawyer mainly, for I have known him well in that capacity. I do not possess the same intimate knowledge of his moods and dispositions in private life and on this aspect I shall touch but briefly.

During the 17 years I was on the Bench he appeared before me constantly and I believe some of his most notable performances were in my Court. When a judgment is produced—and in my opinion a judgment should be a finished product both for matter and style—it is hardly realised how large the lawyers' contribution is to that judgment. Speaking for myself, I am greatly beholden to the Bar and I take occasion to pay public tribute to Sir Alladi, for, he was among the two towering personalities, the other being Sir S. Varadachari, from whom I obtained the greatest assistance.

This illustrates the inter-dependence of the Bench and the Bar. Courtesy, regard and reverence should be reciprocal and not onesided, as they often are. If the Judge makes the lawyer feel as though he is on his trial, the loser by it is more the Judge than the lawyer. It is confidence and not fear that the Judge should inspire. It is the clash of views freely interchanged in good humour that would produce the best result. Without an independent Bar an independent Bench is a delusion. A brow-beating or heckling Judge denies himself through his own conduct the advantage of a fearless and stimulating argument.

Now let me turn to Sir Alladi. Lord Macmillan refers to "diversities of greatness" and to "dissimilar talents". No two great men are alike. And a student of human nature should ask himself in regard to a particular man: what are his special traits which led to his eminence? In the case of Sir Alladi, what are those characteristic talents, those traits of intellect, which have brought him such astonishing success and renown?

He has an amazing faculty for reading the judicial mind and putting it to every legitimate use. I was on the Election Tribunal, I think in the early part of 1921, some months before my appointment to the Bench. Mr. Justice Coutts-Trotter and Mr. Anantakrishna Iyer were the other members of the Bench. There was something in the atmosphere of the Court which, wrongly as the sequel proved, pre-disposed Mr. Justice Coutts-Trotter to a particular view. I well recall how Sir Alladi probed his mind and with infinite dexterity tried to wrest a verdict favourable to him.

Here comes back to me a very pleasant reminiscence. After my work on the Election Tribunal, I returned to the Bar. I then heard it said that Sir Alladi remarked that if I were raised to the Bench (there were rumours then to that effect) they would find me a strong-willed (did he say, I wonder, self-willed?) and determined Judge. I leave it to you to say how far that prophesy was fulfilled.

Let me revive another memory which is extremely vivid in my mind. The question was whether a day's delay in the presentation of a heavy first appeal occasioned by the lawyer's fault should be excused or not. Had the matter come up before Oldfield, J., he would have without compunction decided the point in the negative. Had it come up before me, I would have with equal readiness answered it in the affirmative. Such matters do not occupy more than a few minutes of the Court's time. As it happened, the matter was posted before Oldfield, J., and myself, Sir Alladi having been engaged to oppose the presentation of the appeal. With his unerring instinct fathoming Oldfield, J.'s thoughts, he poured out for about four hours a wealth of learning to confirm him in his view. To complete the story, Oldfield, J., finding that I was as adamant as himself, directed the case to be posted before Spencer, J., and myself, with the result that in a twinkling we excused the delay and admitted the appeal.

Many memories come back to me to-day from those crowded years. Numerous wrestling bouts I had with Sir Alladi and when his super-subtlety was directed towards impeding what I considered justice, I used to wrestle with him and I am glad to say in most cases I won, for no better reason than I could claim the last word. I refer to these instances to show that one of his great gifts is an insight into the working of the judicial mind.

I would next refer to his amazing power of comprehension. No matter how intricate, involved or abstruse the point, he would grasp it at short notice. There is no legal question which eludes his searching brain and he would illuminate it with his profound learn-

ing and intelligence. No one could spring a surprise on him and with his unfailing resourcefulness he was ready for any emergency.

Combined with this is his power of conception, a faculty of forming ideas, of conceiving new positions on the spur of the moment. Where one would think nothing could be said, he would formulate a startling theory, something fresh and unexpected, and develop and amplify it till what had appeared at first a mere phantom became a reality. This makes him a formidable opponent and he has had few adversaries who reach his high level.

He has a mind of great range. He is a reservoir of legal knowledge. His reading has been wide and comprehensive. He is a votary of law who served that goddess with single-minded devotion and on whose altar he sacrificed health, comfort and pleasures which are so much valued.

Sir Alladi is as much a great advocate as a great lawyer. I am tempted to compare styles of advocacy and four names occur to me—Mr. Rangachari, Sir C. P. Ramaswami Aiyar, Sir S. Varadachari and Mr. Nugent Grant. Mr. Rangachari marshalled his facts with wonderful skill and it was a treat to hear him. Sir C. P. Ramaswami Aiyar appeared before me in two heavy cases just before he deserted the bar and for sheer eloquence I would rank him high. Sir S. Varadachari would re-create with the aid of a lively imagination forgotten scenes. And Mr. Nugent Grant's sweet flow of words was bewitching. As to Sir Alladi, his delivery lacks artistic finish and in the heat of argument he forgets (shall I say disdains?) symmetry and finesse though he has literary gifts of a high order which he reserves for other occasions. His forensic utterances are marked by force, vigour and virility. They are a succession of hammer strokes delivered with giant strength suggestive of a powerful personality of massive build unlike Sir Alladi in the flesh, as we know him. He is challenging and aggressive and I can never forget his incredulous look when facing the judge, as though he meant to say "how can you help agreeing with me. If you do not, you are of course wrong".

What is the great lesson of his life? He was a most industrious and painstaking student. The reason for numerous failures is that aspirants find themselves unequal to the occasion due to want of forethought and consequent lack of preparation. In the case of Sir Alladi, through intense application he acquired mastery of the law. You cannot wait until a case, say involving insurance law presents itself, to study that subject. If you do so the opportunity is lost. There was a tide in the affairs of Sir Alladi which being taken at the flood led on to fortune. There is a saying of Disraeli (an epitome of his own life) that the secret of success is for a man to be ready for his opportunity when it comes. So when opportunity opened the door, his rise was meteoric. I remember how he fascinated the junior Bar who would crowd to listen to him, and to them I would say emulate this great quality of his.

Now let me turn to Sir Alladi as a man. Mr. Venkatarama Sastri has referred to Sir Alladi as not being an impressive figure. It means that he seized success without adventitious aids—a commanding presence, a silvery voice or a stately bearing—and greater therefore is his title to fame.

He gives the impression of remoteness from private or personal affairs and seems so obsessed by law and things pertaining to intellect only. But this seeming unconcern veils a very practical and sagacious turn of mind. He is a shrewd judge of men and affairs with an understanding of the springs of human action which is astonishing. The comments he makes in private on his colleagues, or judges or on public men are marked by a profundity of thought which reveals a penetrating mind. His remarks on such occasions are not only illuminating but sprightly, crisp and cutting.

Sir Alladi has risen from humble beginnings and is not ashamed to refer to the fact—by itself, in my opinion, a noble trait. Success, fame and wealth have not spoilt him and in spite of his great position he remains essentially human. It enables him to understand and sympathize with those who are lowly and his readiness to alleviate distress and his generosity are common knowledge.

There is an amusing trait of his to which I should refer—his absent-mindedness—for without it no picture of Sir Alladi would be complete. This quality I found sometimes very diverting. He would meet me and get absorbed in some lively talk and in the midst of it would get up all of a sudden without a single parting word and make straight for the portico. Such little peculiarities of his lent him ineffable charm. He is altogether an engaging personality and I like many others have been irresistibly drawn towards him.

There is no doubt that apart from his official position he is the most distinguished member of our bar. No one would gainsay that he is one of the most eminent Advocates-General we have had or for the matter of that, any part of India. Future generations would venerate him as an illustrious lawyer.

But who knows he may not enter upon a public career? He is still young enough for it and in that case he would bring to the service of the country (in any sphere, political, social or educational—it is a mistaken notion that politics should absorb every talented man's energies) his ponderous and penetrating intellect, his brilliant gifts, his forceful personality and his large-hearted catholicity and posterity will remember him then both as a great lawyer and a great patriot."

Mr. K. Bhashyam, the President of the Association, accepted the portrait on behalf of the Association and Mr. S. Panchapagesa Sastri, Secretary of the Association, proposed a vote of thanks to Sir M. Venkatasubba Rao and others.

Reference in Court to Sir Alladi Krishnaswami Aiyar.—His Lordship the Chief Justice paid a tribute to Sir Alladi Krishnaswami Aiyar, the retiring Advocate-General, on Friday, the 28th April, sitting specially for the purpose in special bench with Mockett and Krishnaswami Ayyangar, JJ. A large number of practitioners and the law officers of the Crown were present in the Court hall. The learned Chief Justice said:

"To-day is the last day of the present term and when the Court re-assembles on July 10, you will have vacated the office of Advocate-General of this Court which you have held with such great distinction for more than fifteen years. This Bench has been formed to express to you the thanks of the Court for the great and ungrudging assistance which you have rendered to it and to the administration of justice generally during your period of office. I have been looking through the list of Attorney-Generals of the Supreme Court and of the High Court of Madras and I find that only one occupant of the office has held it longer than you have. Mr. G. Norton was the Advocate-General of Madras from 1st March, 1833 to 10th March 1853. Although you do not hold the record for length of service in the office, but take the second place in this respect, I have no hesitation in saying that no incumbent can have held it with greater distinction.

"My learned brothers and I are grateful for the help which you have given to us. I, in particular, owe you a great debt of gratitude in this respect. When I came here as Chief Justice seven years ago I was not altogether unacquainted with the general principles of Hindu law but I had still a lot to learn about the Mitakshara law as administered in this Presidency, and I thank you most sincerely for the great assistance which you have given me. The special thanks of the Court are due to you for the help which you have given us in the numerous cases which have raised questions of constitutional law. Since the passing of the Government of India Act, 1935, very important constitutional questions have come up for decision and we have received very great help from you in deciding them.

"Your unflagging interest in the cause of higher education and your benefactions to public institutions are so universally known that it is not necessary to recapitulate them here. Suffice it to say that outside the Court as well as within it you have shown a noble and most generous public spirit. We are now concerned of course more particularly with thanking you for your services to the Court and this we do most sincerely. It is a source of gratification to myself and to my learned brothers that although in the coming term you will not appear before us as Advocate-General we shall still have the benefit of your great help in the administration of justice."

The learned Chief Justice concluded by wishing Sir Alladi all happiness, good health and prosperity and expressed the hope that for many years to come the Court would still have his assistance in unravelling the knotty problems which the law so frequently presented and in deciding where the truth lay.

Replying, Sir Alladi Krishnaswami Aiyar, said:—

"My Lord Chief Justice and My Lords,

I am deeply grateful to Your Lordship the Chief Justice for the extremely kind, and if I may say so, far too generous terms in which you referred to my work as Advocate-General. I own to the normal human weakness of being cheered up by the feeling that—when one is laying down his office—the duties one has been discharging in any sphere are appreciated by those most competent to judge. A good part of my tenure of office has coincided with Your Lordship's term as Chief Justice of this Court, and it is no small consolation to me that my work, such as it has been, should have elicited your Lordship's appreciation in such generous measure.

I have held this office for a much longer term than many others mainly because I was called to the office pretty early, and I loved my work at the Bar more than any other sphere of activity and usefulness that might have been open to me. My relations with the successive Chief Justices and other learned Judges have been uniformly cordial as they have been with successive Governments of different political complexion.

Though I may not be representing the Crown hereafter, as I hope to continue at the Bar for a few more years, I have no doubt that I shall be having opportunities as frequent as in the past of maintaining the same relationship with your Lordship the Chief Justice and other members of this Court as in the past, perhaps not infrequently playing a different role by championing the cause of the citizen as against the Crown.

Once again I thank Your Lordship for the very cordial terms in which Your Lordship has spoken of my work."

BOOK REVIEWS.

THE BOMBAY INDUSTRIAL DISPUTES ACT by P. B. Patwari with P. D. Patwari, with a foreword by M. C. Setalwad, published by P. B. Patwari, 6, Pritamnagar, Ahmedabad, 1944, 191 pages. Price Rs. 8.

The maintenance of industrial peace is becoming a matter of increasing importance with the progressive industrialisation of the country. Conflicts between employers and employees over wages, working hours, employment of women and children, old age pensions, health and accident insurance schemes, right to strike, etc., are inevitable and frequently occur. Different methods of tackling these and similar difficulties have been tried in different countries. Experience has however shown that in such cases no method can yield more salutary or satisfactory results than conciliation and arbitration.

The Bombay Industrial Disputes Act is the first enactment of its kind in India, its aim being to bring about a settlement of industrial disputes by conciliation and arbitration. The text of the Act is set out with helpful and lucid commentaries under each section. In a series of appendices, the rules framed under the Act, the forms prescribed, the Standing Orders made and finally settled by the Industrial Court under section 26 (2) of the Act are made available. Thus all essential information indispensable alike to the employers as well as employees is to be found in the book. The book will be of great use to industrialists and workers, organisations of labour, legal practitioners and in fact to all concerned in the administration of justice. We heartily welcome the publication.

CASE-LAW UNDER THE DEFENCE OF INDIA ACT AND RULES by K. Ramaswami Ayyangar, B.A., B.L., Advocate, Chittoor, 1944, 18 pages. Price Annas Eight.

In this booklet of 18 pages more than 70 decisions pronounced by the various Courts of law in matters arising under the Defence of India Act and Rules have been reviewed and the propositions emerging therefrom have been classified and presented as far as possible in the very language of the learned Judges. The brochure will greatly facilitate an understanding of the provisions of the Act and Rules by lawyers and laymen alike, and give them an accurate idea of their working. Being priced moderately the booklet will be within the easy reach of all.